

Message Text

CONFIDENTIAL

PAGE 01 STATE 181985

60

ORIGIN L-03

INFO OCT-01 EA-07 ISO-00 USIE-00 CIAE-00 EUR-12 PM-04

INR-07 ACDA-07 NSAE-00 PA-01 SS-15 PRS-01 SP-02

TRSE-00 SAJ-01 NSC-05 NSCE-00 INRE-00 SSO-00 /066 R

DRAFTED BY DOD:BALLEN:L/EA:EVERVILLE:L/PM:TABOREK:KA

APPROVED BY EA:RHMILLER

DOD/ISA/FMRA:SGOLDSMITH (DRAFT)

EA/PHL:BAFLECK

EA/PHL:JELAKE

PM/SAS:SWINSHIP

----- 114122

O R 230036Z JUL 76

FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

CG 13TH AF

C O N F I D E N T I A L STATE 181985

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652:GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: QUID (ARTICLE XIX)

REF: A. MANILA 9832 USDEL 77, B. MANILA 10023 USDEL 105

1. AS STATED IN PARA 4, REF A, IT IS DIFFICULT TO DRAFT
ARTICLE CONCERNING QUID UNTIL WE RECEIVE PHILS REPLACEMENT
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 STATE 181985

ARTICLE XIX. IN THE MEANTIME, FOR YOUR BACKGROUND AND

GUIDANCE, MAIN PROBLEMS IN TURKISH ARTICLE XIX RELATED TO LACK OF EXPLICIT REFERENCE TO EXISTING OBLIGATIONS UNDER MILITARY ASSISTANCE AGREEMENTS AND APPLICABLE U.S. LAW (LAST SENTENCE OF PARA 1 AND FINAL PHRASE OF FIRST SENTENCE, PARA 3); REFERENCE TO CREDITS IN FIRST SENTENCE OF PARA 2 (SEE EXPLANATION PARA 5 BELOW); REFERENCE TO INTEREST RATES (PENULTIMATE SENTENCE PARA 2) WHICH MAY CREATE ERRONEOUS IMPRESSION OF SPECIAL TERMS; AND, IN PARA 3, SECOND SENTENCE, LACK OF GRACE PERIOD FOR ENTRY INTO FORCE OF A SUBSEQUENT PROGRAM AGREED TO BY THE EXECUTIVE BRANCH PRIOR TO THE FIVE-YEAR PERIOD. IN ADDITION, FINAL SENTENCE OF PARA 2 RELATED TO A PARTICULAR TURKISH PROBLEM, AND THERE WOULD BE NO REASON TO INCLUDE A SIMILAR PROVISION IN PHIL AGREEMENT.

2. WE WISH TO MAKE EVERY EFFORT TO AVOID LINKING QUID ARTICLE TO DURATION OF AGREEMENT. WE DO NOT WISH THE TURKISH FORMULA TO BECOME THE MODEL FOR OTHER AGREEMENTS. TURKISH DEMAND FOR SPECIFIC LINKAGE OF QUID ARTICLE TO DURATION OF AGREEMENT WAS OUTGROWTH OF CONGRESSIONAL EMBARGO ON MILITARY ASSISTANCE AND SALES TO TURKEY AND CONSEQUENT TURKISH SUSPENSION OF U.S. ACTIVITIES AT TURKISH BASES. THE UNIQUE CIRCUMSTANCES OF THE TURKISH AND GREEK NEGOTIATIONS SHOULD NOT BE CONSIDERED A PATTERN FOR OTHER BASE RIGHTS NEGOTIATIONS. SPECIFIC LINKAGE OF QUID AND DURATION IS CONTRARY TO THE SPIRIT AND INTENT OF MUTUAL DEFENSE RELATIONSHIPS SUCH AS WE HAVE WITH THE PHILS. MOREOVER, SUCH LINKAGE IS NOT NECESSARY, SINCE UNDER U.S. DRAFT ARTICLE XXII PHILS CAN TERMINATE ON ONE YEAR'S NOTICE AT ANY TIME FOR WHATEVER REASON PROVIDED THEY ARE ALSO WILLINGTON TO TERMINATE MDT. WE NOTE ROMUALDEZ STATEMENT REPORTED PARA 1 REF A THAT GOP PREPARED LINK TERM OF AGREEMENT TO TERMINATION PROVISIONS OF MDT. FURTHER LINKAGE OF TERM OF AGREEMENT TO FIVE YEAR MILITARY ASSISTANCE PACKAGES REFERRED TO IN DRAFT QUID ARTICLE SET FORTH BELOW WOULD ONLY INTRODUCE AMBIGUITY INTO DURATION FORMULA, WHICH WILL BE SUBJECT OF SEPTTEL.

3. BELOW (PARA 4) IS DRAFT QUID ARTICLE BASED ON
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 181985

ACCEPTABLE PROVISIONS OF ARTICLE XIX OF TURKISH AGREEMENT TO REFLECT ABOVE CONSIDERATIONS. HOWEVER, WE DO NOT REPEAT NOT WISH DRAFT TO BE TABLED UNTIL WE HAVE FULLY EVALUATED PHIL DESIDERATA AND HAVE RECEIVED PHIL REPLACEMENT TEXT FOR QUID ARTICLE ALONG WITH USDEL'S RECOMMENDATIONS REGARDING APPROPRIATE TEXTS FOR QUID ARTICLE. THUS, WE ARE SENDING DRAFT ARTICLE FOR YOUR INFORMATION AND GUIDANCE ONLY TO REFLECT OUR CONSIDERATION OF YOUR

REQUEST PARA 4 REFTEL, WHICH CONSIDERATION AT THIS POINT IS STILL LARGELY IN THE ABSTRACT.

4. QUOTE: ARTICLE XIX.

1. IN THE INTEREST OF FURTHER DEVELOPING PHILIPPINE DEFENSE PREPAREDNESS AND ENHANCING THE MUTUAL SECURITY COOPERATION OF BOTH GOVTS UNDER ARTICLE II OF THE MUTUAL DEFENSE TREATY OF 1951, THE UNITED STATES SHALL SUPPLY TO THE PHILIPPINES, OR FINANCE PHILIPPINE PROCUREMENT OF, DEFENSE ARTICLES, SERVICES AND MILITARY EDUCATION AND TRAINING IN ACCORDANCE WITH MUTUALLY AGREED PROGRAMS AS

PROVIDED IN THE SUBSEQUENT PARAS OF THIS ARTICLE. THE DEFENSE SUPPORT TO BE PROVIDED TO THE PHILIPPINES SHALL BE PROVIDED IN ACCORDANCE WITH AND SUBJECT TO APPLICABLE AGREEMENTS BETWEEN THE UNITED STATES AND THE PHILIPPINES RELATING TO THE PROVISION AND DISPOSITION OF DEFENSE ARTICLES, SERVICES AND MILITARY EDUCATION AND TRAINING FURNISHED BY THE UNITED STATES AND WITH THE REQUIREMENTS OF APPLICABLE UNITED STATES LAWS AND REGULATIONS.

2. THE UNITED STATES SHALL FURNISH DEFENSE SUPPORT CONSISTING OF GRANTS AND GUARANTEED LOANS TOTALLING \$(BLANK) DURING THE FIRST FIVE YEARS THIS AGREEMENT SHALL REMAIN IN EFFECT. THIS AMOUNT SHALL BE DISTRIBUTED EVENLY OVER THIS PERIOD IN ACCORDANCE WITH ANNUAL PLANS TO BE DEVELOPED BY THE APPROPRIATE AUTHORITIES OF THE TWO GOVTS. UNLESS OTHERWISE MUTUALLY AGREED, IT IS UNDERSTOOD THAT THE AMOUNT MADE AVAILABLE IN EACH OF THESE FIRST FIVE YEARS MAY VARY BY UP TO 25 PERCENT OF THE EQUAL AMOUNT INCREMENTS OF \$(BLANK) PROVIDED THAT THE TOTAL AGGREGATE AMOUNT HEREIN PROVIDED SHALL BE MADE AVAILABLE PRIOR TO CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 181985

THE END OF SUCH FIVE-YEAR PERIOD. FOR THE FIRST YEAR THE GRANT PORTION WILL BE \$(BLANK) AND THE TOTAL AMOUNT OF THE GRANT PORTION FOR THE FIVE-YEAR PERIOD WILL BE NOT LESS THAN \$(BLANK).

3. AT LEAST ONE YEAR PRIOR TO THE COMPLETION OF THE DEFENSE SUPPORT PROGRAM ENVISAGED IN PARA 2 OF THIS ARTICLE, OR OF ANY OTHER PROGRAM WHICH IS SUBSEQUENTLY AGREED UPON PURSUANT TO THIS PARA, THE PARTIES SHALL CONSULT TO DEVELOP DEFENSE SUPPORT PROGRAMS AS MAY BE REQUIRED FOR SUBSEQUENT PERIODS WITHIN THE FRAMEWORK OF, AND CONSISTENT WITH, PREVAILING UNITED STATES LAWS AND REGULATIONS, AND IN ACCORDANCE WITH THEIR RESPECTIVE LEGAL PROCEDURES. UNQUOTE.

5. WE WISH TO AVOID INCLUSION OF FMS CREDITS IN DESCRIPTION OF COMPOSITION OF QUOTE DEFENSE SUPPORT UNQUOTE AND ACCORDINGLY HAVE OMITTED WORD QUOTE CREDITS UNQUOTE IN PARA 2 OF QUID ARTICLE. BECAUSE ISSUANCE OF FMS LOAN GUARANTY ENTAILS ONLY 10 PERCENT CHARGE AGAINST AVAILABLE APPROPRIATIONS, AND IN LIGHT OF WORLDWIDE FMS FINANCING PROGRAM NEEDS, WE STRONGLY PREFER WHEREVER POSSIBLE TO PROVIDE FMS FINANCING THROUGH GUARANTY OF LOANS. END RESULT INsofar AS GOP IS CONCERNED IS VIRTUALLY THE SAME. IF FOR OPTICAL PURPOSES GOP MIGHT WISH TO RETAIN WORD QUOTE CREDITS UNQUOTE, WE COULD ACCEPT FORMULATION "GRANTS, CREDITS AND GUARANTEED LOANS" PROVIDED UNDERSTANDING IS CLEAR THAT UNDER CURRENT PRACTICE FMS FINANCING WOULD BE PROVIDED THROUGH LOAN GUARANTEES.

6. FYI. RE MULTI-YEAR FINANCING AND CONGRESSIONAL CYCLE FOR AUTHORIZATION AND APPROPRIATION LEGISLATION, USDEL SHOULD BE AWARE THAT ACTION BY CONGRESS ON SPANISH TREATY INDICATES CONGRESS WILL INSIST ON ANNUAL AUTHORIZATION AND APPROPRIATION WITH RESPECT TO OTHER AGREEMENTS, INCLUDING PHILIPPINES MBA. IN GIVING ADVICE AND CONSENT TO SPANISH TREATY, SENATE MADE CLEAR THAT IT WAS APPROVING FIVE YEAR COMMITMENT TO CARRY OUT TERMS OF AGREEMENT, INCLUDING SPECIFIED LEVEL OF DEFENSE SUPPORT. HOWEVER, SENATE ADDED DECLARATION TO ITS RESOLUTION OF ADVICE AND CONSENT THAT SUMS FOR MILITARY QUID PACKAGE QUOTE SHALL CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 181985

BE MADE AVAILABLE THROUGH THE NORMAL PROCEDURES OF THE CONGRESS, INCLUDING THE PROCESS OF PRIOR AUTHORIZATION AND ANNUAL APPROPRIATIONS UNQUOTE. CONSISTENT WITH THIS DECLARATION, SENATE FOREIGN RELATIONS COMMITTEE HAS REPORTED OUT A BILL FOR IMPLEMENTATION OF SPANISH TREATY WHICH AUTHORIZES FUNDING FOR FY-77 ONLY. YOU SHOULD ALSO BE AWARE THAT RECENTLY ENACTED SECTION 507 OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED, CONFIRMS THIS TREND INsofar AS IT AUTHORIZES APPROPRIATIONS TO CARRY OUT SPANISH, GREEK AND TURKISH AGREEMENTS DURING FY-77 ONLY. THUS, WHILE CONGRESS MAY BE WILLING TO RECOGNIZE MULTI-YEAR NATURE OF COMMITMENTS CONTAINED IN MBA, AND TO APPROVE MBA WITH THAT IN MIND, CONGRESS WILL ALMOST CERTAINLY INSIST ON ANNUAL REVIEW OF THAT COMMITMENT THROUGH AUTHORIZATION/APPROPRIATIONS PROCEDURES WHICH WOULD PROVIDE A MECHANISM FOR TAKING INTO ACCOUNT UNFORESEEN YET FUNDAMENTAL CHANGES IN CIRCUMSTANCES. SUCH CHANGES COULD LEAD TO CONGRESSIONAL ACTION TO REDUCE OR EVEN REJECT THE QUID PACKAGE FOR A GIVEN FISCAL YEAR EVEN THOUGH THIS WOULD PLACE US IN VIOLATION OF AN OBLIGATION UNDER AN INTERNATIONAL AGREEMENT WHICH HAD BEEN APPROVED BY CONGRESS. HOWEVER UNLIKELY THIS POSSIBILITY, IT SHOULD

BE KEPT IN MIND BY USDEL AND WILL, AT SOME POINT, HAVE TO
BE EXPLAINED TO PHILS. END FYI. ROBINSON

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MILITARY BASE AGREEMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 23 JUL 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE181985
Document Source: CORE
Document Unique ID: 00
Drafter: BALEN:L/EA:EVERVILLE:L/PM:TABOREK:KA
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760283-0224
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760727/aaaaaxov.tel
Line Count: 225
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 MANILA 9832, 76 MANILA 10023
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 03 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 JUN 2004 by CunninFX>; APPROVED <27 SEP 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: PHILIPPINE BASE NEGOTIATIONS: QUID (ARTICLE XIX)
TAGS: MARR, RP, US
To: MANILA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006